IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11863 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NASARINBANU WIFE OF DETENUE IMTIYAZ @ LALI GORUMIYA ANSARI

Versus

COMMISSIONER OF POLICE

Appearance:

MR SUNIL C PATEL for Petitioner

MR ND GOHIL, LEARNED AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/05/2001

ORAL JUDGEMENT

1. The learned Advocate Mr. N.M.Kapadia and learned AGP Mr. N.D.Gohil on behalf of respondent State.

2. In present petition the petitioner has challenged the detention order dated 12.10.2000 passed by Police

Commissioner City Surat under Section 3 sub Clause 1 of the PASA Act and the petitioner has been detained in District Jail Jamnagar as Class II detenu.

3. The present petition has been filed by the petitioner on 8.11.2000 wherein rule has been issued by this Court on 4.12.2000 with a direction to the respondents State to file reply and thereafter matter stand adjourned on 12.12.2000 and number of occasions. Till today no reply has been filed by the respondents State inspite of giving sufficient opportunities to file reply against the present petitioner. Thereafter the matter has been taken up for final hearing today.

4. Learned Advocate Mr. Kapadia has submitted that according to the ground of detention against the present petitioner in paragraph 2 page 28 dated 12.10.2000 wherein it is mentioned by the detaining authority that petitioner is a Bootlegger and involved in offence arise out of provisions of Indian Penal Code in the year 2000 as per Annexure-1 in one offence. Mr. Kapadia has submitted, according to the offences which has been registered against the present petitioner is under Bombay Prohibition Act and not under provisions of Indian Penal Code and therefore it amounts to non-application of mind and denying the right of effective representation to the petitioner. No material has been supplied to the petitioner in respect to the offences if any committed under the provisions of Indian Penal Code. Mr. Kapadia has also submitted, offences which have been registered against the present petitioner at DCD Police Station Crime Register No. 5359/00 under Bombay Prohibition Act Section 66(1)B 65(E)(A), Section 81 and 83, in the said offences the petitioner was arrested on 5.7.2000 and on the next day the petitioner was released on bail. Mr Kapadia has relied upon the decision of this Court in Special Civil Application No. 10922/2000 dated 23.4.2001, in paragraph 6 of the said decision, details given by the detaining authority about the offences registered against the petitioner under provisions of Indian Penal Code but in reality the facts which have been registered against the petitioner is under Bombay Prohibition Act. Therefore, this Court has set-aside the detention order on this ground all alone.

5. Learned Advocate Mr. Kapadia has also raised contention that detaining authority has delayed in passing the detention order. First offence which has been registered- Crime Register No. 5359/2000 dated 4.7.2000 and two unregistered offences as per grounds of detention dated 27.5.2000 and 10.6.2000 but detaining

authority has passed an order on 12.10.2000 and therefore there is a delay in passing the detention order. Mr. Kapadia relied upon the decision of this Court in Special Civil Application No. 6650 of 1999 dated 29.2.2000 wherein the identical contention has been raised about non-explanation of delay in taking action of passing the detention order after the live link between the alleged anti-social activity and the action taken having been snapped. In the said decision also the order of detention has been set-aside by this Court. Mr. Kapadia has submitted that the contention has been raised by the present petitioner in paragraph 29, paragraph 33 and paragraph 35 but there is no answer by the respondents State in respect to the contention which has been raised by the present petitioner. Therefore, learned Advocate Mr. Kapadia has submitted that looking to the said contention which has been covered by two decisions of this Court and therefore order of detention is required to be set-aside.

6. Learned AGP Mr. N.D.Gohil appearing on behalf of the respondents State has submitted that State authority has not filed reply but facts remain that detaining authority has passed an order of detention after considering the subjective satisfaction and there is cogent material against the present petitioner and, therefore, detaining authority has no option except to pass the detention order against the present petitioner, otherwise his activities will definitely disturb public order or peace.

7. I have heard learned Advocates appearing on behalf of respective parties and considering the submission of learned Advocate Mr. Kapadia as well as Mr. Gohil, the contention which has been raised by Mr. Kapadia has been squarely covered in two decisions which have been referred above in Special Civil Application No. 10922 of 2000 dated 23.4.2001 wherein paragraph 6 the following observation has been made by this Court :-

> So, on one hand, the petitioner has been branded as Bootlegger on the ground that a criminal offence under Indian Penal Code has been registered against him and on the other hand detail given in the order at page No. 26 goes to show that the offence registered against the petitioner was under the Bombay Prohibition Act and not under the Indian Penal Code. This shows that the detaining authority had not applied his mind properly to the evidence and material before him. When the order has been passed for the

detention of the detenu without application of mind, then such an order cannot be sustained for any moment. On the other hand, though the detaining authority was involved in an offence under Indian Penal Code, the materials with respect to that office have not been supplied to the petitioner. In that view of the matter, the petitioner was not in a position to make effective representation against his detention and therefore, the constitutional right guaranteed under Article 22(5) of the Constitution of India has been clearly violated.

The second contention raised by Mr. Kapadia is covered by a decision of this Court in Special Civil Application No. 6650 of 1999 dated 29.2.2000. The relevant paragraphs is as under:

In the matter of PRADEEP NILKATNH PATURKAR VS. S.RAMAMURTHY & ORS (AIR 1994 SC 656) having followed the earlier decisions, the Supreme Court has held that if the delay in taking the impugned action from the last date of antisocial activity of the detenu is not sufficiently explained the order is vitiated and cannot be sustained. That the same proposition has been reiterated by this Court in the matter of ELESH PATEL VS. C.P.AHMEDABAD reported vide 1997(1)GLH381.

On scrutiny of the grounds of detention, it appears that the grounds of detention is devoid of any material to explain the delay in taking action from 30.6.99 to 5.8.99. That despite due service of rule, none of the respondents have filed affidavit-in-reply to controvert the averments made in the petition, and as such, there being no explanation on record for the inordinate delay which has occasioned, the impugned order could hardly be sustained.

8. I have considered these two decisions of this Court which are squarely covered by the two contentions which has been raised by Mr. Kapadia and there is no reply filed by the respondents State explaining the delay in taking action or delay in passing the detention order and second contention that no material has been supplied to the petitioner about the offences as suggested in ground of detention committed by the petitioner under provision of Indian Penal Code and therefore it amounts to denying the right of effective representation and

therefore, according to my opinion, the order of detention is required to be set-aside.

9. For the reasons recorded hereinabove, the petition succeeds and the same is allowed. The order of detention dated 12.10.2000 is vitiated and resulted to quash and set-aside. The detenu Mohammad Imtiaz @ Lali Gorumiya Ansari who has been detained at District Jail Jamnagar be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No

Direct service is permitted.

(H.K.Rathod, J)

Jayanti*